

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Request for Review |) | |
| of the Decision of |) | |
| the Universal Service Administrator by |) | |
| |) | |
| Wathena Unified School District |) | File No. SLD 106958 |
| Wathena, Kansas |) | |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Changes to the Board of Directors |) | CC Docket No. 97-21 ✓ |
| of the National Exchange Carrier |) | |
| Association, Inc. |) | |

ORDER

Adopted: November 9, 1999

Released: November 9, 1999

By the Common Carrier Bureau:

1. The Bureau has under consideration a Letter of Appeal filed by the Wathena Unified School District (Wathena) on June 14, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Wathena seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we grant the Letter of Appeal.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.²

3. By letter dated January 26, 1999, the SLD denied Wathena's request for

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.502, 54.503.

17, 1999, the SLD affirmed its initial funding decision. The Administrator's Decision on Appeal indicated that services listed by Wathena as dedicated access/Internet access included some internal connection services, referring specifically to the inclusion of a router. It further indicated that, where a particular funding request included some internal connections, the entire funding request was recategorized by SLD as internal connection services so as to "avoid the possibility of treating priority two services (internal connections) as priority one services (telecommunications, dedicated and Internet access services)." Because internal connections are funded only when a discount level of 70 percent or above has been shown, these services could not be supported for this funding period.

4. Section 54.5 of our rules defines Internet access as "[t]he transmission of information as part of a gateway to an information service, [and] may include data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services."³ Section 54.506 states that a service is eligible for support as internal connections if "such service is necessary to transport information within one or more instructional buildings of a single school campus."⁴ In its recent *Tennessee* decision, the Commission considered funding requests for, *inter alia*, hubs and routers.⁵ It noted that, as a practical matter, there are instances where it is difficult to draw a line between end-to-end Internet access service and internal connections.⁶ As a general matter, the Commission concluded that, if the facilities used in providing a service are located on school premises, it is presumed they are generally not part of an end-to-end Internet access service.⁷ In *Tennessee*, the Commission enumerated certain indicia, however, that may be used to further evaluate the nature of the service and that may be considered to rebut this presumption.⁸

5. Applying these indicia, we conclude that the service provided to Wathena that is in dispute here is Internet access service that does not include costs for internal connections.

³ 47 C.F.R. § 54.5.

⁴ 47 C.F.R. § 54.506.

⁵ *Request for Review by The Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45 and 97-21, Order, FCC 99-216, 1999 WL 604160 (rel. August 11, 1999) (*Tennessee*).

⁶ *Id.* at para 35.

⁷ *Id.* at para 37.

⁸ Relevant indicia include, but are not limited to, ownership of the facility used to provide the service, any lease-purchase arrangements regarding such facility, exclusivity arrangements regarding such facility, maintenance agreements regarding such facility and up front capital costs. *Id.* at paras. 38-39.

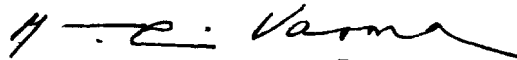
First, we find no evidence that the router is owned by Wathena. In its Letter of Appeal, Wathena states that Kanren, the service provider, has placed a router in the school to service its line, but noted that the router is not, nor will it be in the future, the property of the school. Nor is there evidence of a lease-purchase agreement that would indicate the possibility that Wathena may have agreed to purchase the router at the end of the contract term. As further evidence that the router is not owned by Wathena, the documentation provided by Wathena indicates that, although it is required to pay Kanren an initial connection fee, it is also required to pay monthly recurring charges. Lastly, Wathena provided documentation stating that it is required to provide all local hardware and software on its side of the Kanren router, indicating that the service offered by Kanren up to and including the router, is end-to-end-Internet access service. As such, we conclude that Wathena is entitled to discounts for this service.

6. To the extent necessary to effectuate the decision above, we grant a waiver of section 54.507(b)(2) of the Commission's rules. This rule provides that schools and libraries may receive discounts on nonrecurring services only through September 30, 1999.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Letter of Appeal filed by Wathena Unified School District on June 14, 1999 IS GRANTED to the extent provided herein. We direct the Administrator to review Wathena's application and to issue a revised Funding Commitment Decision Letter consistent with the decision above.

8. IT IS FURTHER ORDERED, pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that section 54.507(b)(2) of the Commission's rules, 47 C.F.R. §54.507(b)(2), is WAIVED for a period of 180 days from the date of the issuance of a Funding Commitment Letter by the Administrator pursuant to this order.

FEDERAL COMMUNICATIONS COMMISSION



Yog R. Varma
Deputy Chief, Common Carrier Bureau